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IN THE

Supreme Court of the United States

October Term, [redacted] 1969

No. 295

WHEELER-VAN LABEL COMPANY, Subsidiary of STECHER-TRAUNG-SCHMIDT CORPORATION,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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No.

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v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above case on April 9, 1969.

Opinions Below

The opinion of the National Labor Relations Board is reported at 172 N. L. R. B. No. 186 (1968). The opinion of the Court of Appeals for the Second Circuit is reported at 408 F. 2d 613 (1969).

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was made and entered on April 9, 1969, and copies thereof are appended to this petition in the Appendix at page 17. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented

1. Whether, in the absence of independent unfair labor practices, the National Labor Relations Board has authority under the National Labor Relations Act to order petitioner to bargain with a labor organization which has not won a Board-conducted secret ballot election among the employees.

2. Whether, within the meaning of Section 9 of the N. L. R. A., the employees in petitioner's "composing room," or plate department, constitute an appropriate unit for the purposes of collective bargaining.

3. Whether by its refusal to recognize and bargain with the labor organization, petitioner violated sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act.

Statutes Involved

Sections 8(a)(1), 8(a)(5) and (9) of the National Labor Relations Act as amended, 29 U. S. C. § 158(a)(1), (5).

Statement of the Case

I. Facts Involved

Petitioner is a commercial printer engaged in the printing of product labels. These labels are not affixed to the customer's product by petitioner.

Pursuant to a Decision and Direction of Election issued January 27, 1967, by the Regional Director of the Board's Seventh Region, a secret ballot election was conducted among Petitioner's employees in the following two units:

Voting Group (1): All journeymen pressmen, apprentice pressmen, assistants and helpers employed in the employer's pressroom and rotogravure department employees but excluding composing area employees, coating department employees, production scheduling employees, guards and supervisors as defined in the Act, and all other employees.

Voting Group (2): All production and maintenance employees, including quality control employees, and the shipping employees but excluding office clerical employees, guards and supervisors as defined in the Act, and employees in Group (1).

Three unions appeared on the ballot. The election resulted in the certification of the Grand Rapids Printing Pressmen and Assistants' Union, Local No. 13, as bargaining representative for the employees of Group (1) and "no union" as representative of the employees in Group (2). The "composing room" employees voted in Group (2). The employer engaged in no unfair labor practices during the course of the election campaign and no unfair labor practice charges were filed.

On August 4, 1967, within eight (8) months after the election, the petitioner received a letter from the International Typographical Union claiming that the union represented a majority of the "composing room" employees and demanding that petitioner grant the union recognition as bargaining representative for these employees. By letter dated August 9 the petitioner denied this request. By

letter dated August 17, 1967, the union repeated its demand. By letter dated August 29, 1967, petitioner again declined recognition. On September 6, 1967, the union filed an unfair labor practice charge with the Seventh Regional Director charging that petitioner unlawfully refused to recognize and bargain with the union. On September 29, 1967, four of the five "composing room" employees met, at their request, with Bernard Kochanowski, the petitioner's Plant Superintendent. At this meeting one employee advised Kochanowski in substance that the employees wanted the union to represent them, to which Kochanowski responded that he would relay the information. There was no further contact.

Neither the unfair labor practice charge nor the Board issued complaint alleges that petitioner engaged in any unlawful independent acts of interference, restraint or coercion.

II. The Board's Decision and Order

The Board accepted the Trial Examiner's findings of fact, conclusions that the petitioner's "composing room" employees constituted an appropriate bargaining unit and that petitioner had unlawfully refused to recognize and bargain with the union, and recommendations that petitioner be ordered to bargain with the union.

III. The Decision of the Court of Appeals

The Court of Appeals for the Second Circuit enforced the Board's order. The Court stated that petitioner bore a sizeable burden in attempting to show that the bargaining unit found to be appropriate by the Board was in fact inappropriate. The Court further held that petitioner had not expressed a good-faith doubt of the union's majority

status and that substantial evidence on the record supported the Board's finding that petitioner had unlawfully refused to bargain with the union.

Reasons for Granting Writ

The Courts of Appeals have been called upon with increasing frequency to determine whether an employer should be required to bargain with a union whose claimed majority status rests upon authorization cards, the union either having lost an election or never having participated in an election. The decisions among the Courts of Appeals are in conflict and a decision by the Court on such question is important in the administration of the National Labor Relations Act.

The Board, as the agency charged with responsibility for administering the National Labor Relations Act, as developed criteria for determining the appropriateness of a claimed collective bargaining unit. While such criteria are not hard and fast they do serve as guidelines and inject a degree of predictability. The Board, as to petitioner's "composing room," has drastically departed from established precedent and has offered no explanation or rationale for such departure. A decision by this Court on the unjustified departure by the Board from its established precedent is important in the administration of the National Labor Relations Act.

I. The decision below is in conflict with decisions of the Fourth Circuit and the Sixth Circuit with regard to an employer's duty to participate in a card check.

The Court below concluded that petitioner did not entertain a good-faith doubt when it refused to recognize the union because:

> "Its August 9, 1967 letter stated only its preference for an election and its subsequent letter ignored the Union's suggestion that an impartial third party check the authorization cards."

In direct conflict with this holding other Circuit Courts of Appeals have held that an employer carries no burden to participate in such an impartial card check. In *NLRB v. Sehon Stevenson & Co.*, 386 F. 2d 551 (CA-4, 1967) the Court pointed out that:

> "Because of their unreliability (authorization cards) should not be accepted as proof of the union's claim of majority status, and an employer is entitled to doubt the union's claim as long as it is so unreliably founded" (386 F. 2d at 553).

In *NLRB v. Fashion Fair, Inc.*, 399 F. 2d 764 (CA-6, 1968) the Sixth Circuit Court of Appeals held that:

> "An employer is not obligated to submit to a card check by a neutral third party in order to preserve his claim of good faith doubt" (399 F. 2d at 768).

In *Lane Drug Co. v. NLRB*, 391 F. 2d 812 (CA-6, 1968) the Sixth Circuit held that:

> "The offer of a check of authorization cards does not impose a duty upon the Company to submit to the check or suffer the consequences of a refusal to bargain charge" (391 F. 2d at 820).

This Court should take this opportunity to resolve the conflict between the Second Circuit and the Fourth and Sixth Circuits.

II. The decision below conflicts with decisions of the Fourth and Sixth Circuits and other decisions of the Second Circuit with respect to the reliability of authorization cards as evidence of a union's majority status.

In the Court below Petitioner argued that a bargaining order should not be based upon authorization cards. The

Court concluded that ". . . we are committed to a contrary view."

In *NLRB v. Logan Packing Co.*, 386 F. 2d 562 (CA-4, 1967) the Court held that:

> "For such reasons (as are cited above), a card check is not a reliable indication of employees' wishes" (386 F. 2d at 566).

The Court likened the unreliability of authorization cards to the unreliability of an employer solicited open showing of hands.

In *NLRB v. Fashion Fair, Inc.*, 399 F. 2d 764 (CA-6, 1968) the Court observed that:

> "As both the Courts and the Board recognize, the use of authorization cards is a 'notoriously unreliable method of determining the majority status of a union'" (399 F. 2d at 768).

The Second Circuit has itself acknowledged the unreliability of authorization cards. In *NLRB v. River Togs, Inc.*, 382 F. 2d 198 (CA-2, 1967) the Court footnoted its opinion with the following:

> "The Board itself has characterized authorization cards as a notoriously unreliable method of determining majority status of a union" (382 F. 2d 206 footnote 10).

This Court should take this occasion to resolve the conflict between the Second Circuit and the Fourth and Sixth Circuits and within the Second Circuit itself on this issue.

III. The decision of the Court below is in conflict with decisions of the Fourth Circuit, the Sixth Circuit, the Eighth Circuit, other decisions of the Second Circuit and with decisions of the Board itself with respect to those instances in which a bargaining order is justifiably issued.

The Board neither alleged nor proved that petitioner had engaged in any independent acts of a coercive, interfering or restraining nature. Petitioner was charged with having violated Sections 8(a) (1) and (5) of the National Labor Relations Act by having expressed a preference for a secret ballot election and by accordingly refusing to participate in a card check. The Board concluded and the Court below affirmed that petitioner did not have a good-faith doubt of the union's majority status and thus ordered petitioner to bargain with the union.

In *Aaron Brothers Company of California*, 158 NLRB 1077, the Board refused to issue a bargaining order saying that:

> "Absent an affirmative showing of bad faith, an employer, presented with a majority card showing and a bargaining request, will not be held to have violated his bargaining obligation under the law simply because he refuses to rely upon cards, rather than an election, as the method for determining the union's majority" (158 NLRB at 1078).

In *Wilder Mfg. Co.*, 173 NLRB No. 10, the Board refused to issue a bargaining order even though the union had demanded recognition, the employer had examined the authorization cards and thereafter a majority of the employees struck and picketed. The Board concluded that:

> "In the present case, however, there is no showing whatsoever that Respondent had rejected the collective bargaining principle or engaged in any interference, restraint or coercion of employees to undermine the union. Nor does the record show that Respondent

> has engaged in any other conduct which would prevent the holding of a fair election" (69 LRRM 1322 at page 1323).

In *Grafton Boat Co.*, 173 NLRB No. 150, 69 LRRM 1509, the employer was found to have engaged in a number of unlawful acts, but, concluded the Board:

> "Because of the nature of the unfair labor practices found, their timing and limited number, we are not persuaded that they are sufficiently substantial to demonstrate Respondent's bad faith and vitiate its claim that its refusal to bargain was lawfully motivated" (69 LRRM at page 1511).

In *NLRB v. S. S. Logan Packing Company*, 386 F. 2d 562 (CA-4, 1967) the Fourth Circuit held that:

> "In those exceptional cases where the employer's unfair labor practices are so outrageous and pervasive and of such a nature that their coercive effects cannot be eliminated by the application of traditional remedies, with the result that a fair and reliable election cannot be had, the Board may have the power to impose a bargaining order as an appropriate remedy for those unfair practices. Then it is imposed without need of answering the question whether the union ever obtained majority status. The remedy is an extraordinary one, however, and, in light of the guaranty of Section 7 of employees' rights not to be represented its use, if ever appropriate must be reserved for extraordinary cases" (386 F. 2d at pages 570-571).

In *Lane Drug Co. v. NLRB*, 391 F. 2d 812 (CA-6, 1968) the Sixth Circuit held that:

> "The use of such (authorization) cards has been held by the Board to be a 'notoriously unreliable method of determining the majority status of a union' . . . An order to bargain, based thereon, has been described as 'strong medicine' to be applied only 'with restraint'" (391 F. 2d at page 820).

In *NLRB v. Arkansas Grain Corporation*, 390 F. 2d 824 (CA-8, 1968) the Eighth Circuit disagreed with the Board's

contention that Respondent's violation of Section 8(a) (1) and its further rejection of the principle of collective bargaining warranted a bargaining order. The Court held that:

> "This contention proceeds on the theory that the conduct of Respondent giving rise to the 8(a) (1) violation was so coercive and aggravated as to effectively dissipate the employees' support for the Union and impair the Union's chances of prevailing in a second election. We do not doubt that a bargaining order rather than a cease and desist order may at times be an appropriate remedy to restore the *status quo*, particularly where the union's support among the employees has been chilled as the result of the employer's unfair labor practices, the effects of which might vitiate any strong union support in a subsequent election. . . . As stated above, Respondent did not engage in any outrageous or aggravated conduct. We do not believe therefore that its conduct, though in violation of Section 8(a) (1), would have such a substantial impact on the employees' freedom of choice in a second election as to render negatory the effect of a cease and desist order. We agree with the principles enunciated in NLRB v. S. S. Logan Packing Company. . . :" (390 F. 2d at pages 830-831).

In *NLRB v. Flomatic Corporation*, 347 F. 2d 74 (CA-2, 1965) the Second Circuit concluded that "A bargaining order, however, is strong medicine" (347 F. 2d at page 78.) Referring specifically to card checks the Court concluded that:

> "Such card majorities must by necessity be deemed evidence of the *status quo* ante where the employer's conduct has been so flagrantly hostile to the organizing efforts of a union that a secret election has undoubtedly been corrupted as a result of the employer's militant opposition" (347 F. 2d at page 78).

In *NLRB v. Pembeck Oil Corporation*, 404 F. 2d 105 (CA-2, 1968) the Second Circuit concluded that:

> "A bargaining order is clearly appropriate 'where the employer's conduct has been so flagrantly hostile to the organizing efforts of a union' that any future election would be tainted by his past transgressions. . . . But here there has been no such display of flagrant hostility as would suggest that a future election would not actually reflect the desires of the employees" (404 F. 2d at page 112).

The Court went on to observe that:

> ". . . the finding of an unlawful refusal to bargain does not *ipso facto* and in all cases lead to the conclusion that an order to bargain must always be the only remedy for the violation" (404 F. 2d at page 112).

Neither the Board nor the Court concluded or even suggested that petitioner's conduct had been "flagrantly hostile" or "aggravated." Neither the Board nor the Court found that petitioner's allegedly unlawful refusal to recognize would render a free and fair election impossible. It is inappropriate, therefore, to issue the "strong medicine" of a bargaining order where there is no disease.

This Court should take this opportunity to resolve the conflict between the Second Circuit and the Fourth, Sixth and Eighth Circuits, the conflict within the Second Circuit itself and the conflict within Board decisions and between Board decisions and decisions of the Circuit Courts of Appeals on the issuance of a bargaining order to remedy an unfair labor practice.

IV. The decision of the Court below is in conflict with decisions of the Sixth Circuit, other decisions of the Second Circuit and decisions of the Board itself with respect to the determination of a good faith doubt.

Petitioner's "composing room" employees had participated in a secret ballot election within one year prior to the union's August, 1967, request for recognition. The

Board has ruled that a representation petition filed more than sixty (60) days prior to the end of the one-year election bar period established by Section 9(c) (3) of the National Labor Relations Act will not be acted upon by the Board. *Randolph Metal Works, Inc.*, 147 NLRB 973; *Vickers, Incorporated*, 124 NLRB 1051. Thus, petitioner could not have filed a viable representation petition at the time recognition was requested. Thereafter, after the filing of the unfair labor practice charge, such a petition would have been rendered inoperative by the pending charge. Petitioner, therefore availed itself of the only possible avenue for expression of doubt by expressing a preference for an election and refusing to recognize the union.

The burden of establishing a violation of 8(a) (1) and (5) rests solely upon the General Counsel. *John P. Serpa, Inc.*, 155 NLRB No. 12; *Aaron Brothers*, 158 NLRB 1077; *NLRB v. Fashion Fair, Inc.*, 399 F. 2d 764 (CA-6, 1968); *NLRB v. River Togs, Inc.*, 382 F. 2d 198 (CA-2, 1967).

In *Aaron Brothers Company of California*, 158 NLRB 1077, the Board concluded that:

> "Whether an employer is acting in good or bad faith in questioning the union's majority is a determination which of necessity must be made in the light of all relevant facts of the case, including any unlawful conduct of the employer, the sequence of events, and the time lapse between the refusal and the unlawful conduct. Where a company has engaged in substantial unfair labor practices calculated to dissipate union support, the Board, with the Court's approval, has concluded that employer insistence on an election was not motivated by a good-faith doubt of the union's majority, but rather by a rejection of the collective-bargaining principle or by a desire to gain time within which to undermine the union" (158 NLRB at page 1079).

The Court below found that as petitioner at no time expressed its doubt as to the union's majority status, its refusal to recognize was not in response to a good faith doubt of the union's status. In *NLRB v. Fashion Fair, Inc.*, 399 F. 2d 764 (CA-6, 1968) the Sixth Circuit held that:

> "An employer's bad faith is not demonstrated merely by showing that he did not immediately set forth a reason for his good faith doubt, or in advancing no reason at all. The question to be decided is whether at the time of the refusal to recognize, the employer actually possessed a good faith doubt, the burden being on the General Counsel to prove the negative" (399 F. 2d at page 768).

In *Pulley v. NLRB*, 395 F. 2d 870 (CA-6, 1968) the Sixth Circuit held that:

> "An allegation on the part of the employer that he possesses a good faith doubt as to the majority status of a union is not in the nature of an affirmative defense upon which the employer has the burden of proof. Rather the burden of proof is on the General Counsel to establish the bad faith of the employer in refusing to bargain with a union claiming to represent a majority of his employees. . . . As the Board admits in its brief, 'this burden is not met simply by showing that the employer has advanced no reason for his doubt.' Merely proving that an employer rejected a card check in favor of a Board supervised election is not sufficient to negative a claim of good faith doubt. . . . The proof may ultimately indicate that there was no reasonable basis for the employer's asserted good faith doubt. But this is not dispositive of the case for all that is required is an honest doubt, whether or not such doubt is justified" (395 F. 2d at page 876).

In *Textile Workers of America v. NLRB*, 386 F. 2d 790 (CA-2, 1967) the Second Circuit held:

> "There is equally little force in the union's argument that an employer cannot be held to have a good faith doubt when he rejects an offer allowing him to examine

> authorization cards or to have a disinterested person do so. There is no need to cite the many cases in this Court and others where a union with a majority of authentic cards has been found to lack a valid majority'' (386 F. 2d at page 793).

The burden of proof is upon the General Counsel to show that petitioner did not, at the time of its refusal to recognize the union, have a good faith doubt of the union's majority status. General Counsel could carry this burden by showing that petitioner refused recognition to gain time within which to undermine the union's majority status or by showing that petitioner completely rejected the principle of collective bargaining. General Counsel did neither.

The Second Circuit has stated that expressions of good faith doubt need take no particular form. The Sixth Circuit has held that there need be no expression at all of doubt. The Board has held that:

> ". . . the General Counsel has the burden of proving not only that a majority of employees in the appropriate unit designated the union as their bargaining representative, but also that the employer in bad faith declined to recognize and bargain with the union. This is usually based on evidence indicating that the employer has completely rejected the collective bargaining principle or seeks to gain time within which to unlawfully undermine the union and dissipate its majority'' (*Wilder Mfg. Co.*, 173 NLRB No. 10, 69 LRRM 1322 at page 1323).

The decision of the Board as enforced by the Court below placed petitioner, in retrospect, in a wholly untenable position. Petitioner could not have invoked the Board established procedures for determining the appropriateness of a bargaining unit because it was then more than sixty (60) days prior to the end of the Section 9(c) (3) election year period. Certainly petitioner could not simply ignore the union's request. It would appear that regardless of the

language in petitioner's response to the union, the Board would have found an absence of good faith doubt. If petitioner had sought to investigate the union's claimed majority, it may very well have been exposed to unfair labor practice charges.

This Court should take this opportunity to resolve the conflict between the Second Circuit and the Sixth Circuit, the conflict within the Second Circuit itself and the conflict between the Board and the Circuits on the issue of the method to be employed to ascertain whether a refusal to recognize was based on a good faith doubt and whether the existence of a good faith doubt must be voiced in a particular manner at a particular time.

V. The finding by the Board that petitioner's "composing room" constitutes an appropriate unit represents a departure from Board established precedent for which the Board offers no rationale and was therefore an arbitrary and capricious abuse of the Board's discretion.

Petitioner fully acknowledges the Board's latitude in arriving at unit determinations. The Court below found that the facts supporting the Board's unit finding were "... at least as strong as those found sufficient in *Empire State Sugar Co. v. NLRB*, 401 F. 2d 559 (CA-2, 1968)" (App. page 22).

The Board has traditionally treated composing room employees as a distinct class of craftsmen constituting a unit appropriate for bargaining purposes where the principal functions of those employees have been: (1) the setting of type either by machine or by hand; *and* (2) the assembling of such type in forms known as "chases" for use in the printing process. See, *e.g., Frye & Smith, Ltd.*, 151 NLRB 49 (1965); *Leslie F. Clarke & Co., Inc.*, 147 NLRB 1240 (1964); *Phototype, Inc.*, 145 NLRB 1268 (1964); and *Berea Publishing Co.*, 140 NLRB 516 (1963).

Petitioner's "composing room" employees with one minor exception are not required as a function of their job to set type or to assemble type in forms. The sole exception is one employee who devotes part of his time to hand setting type. However, the type thus set is not used in petitioner's production process.

As to physical surroundings the "composing room" employees are ". . . circled around by the pressroom." There is no barrier between the "composing room" and the pressroom.

Petitioner's "composing room" employees render a service function to the pressroom but do not perform the type of work which the Board has found to be traditional composing room work.

This Court should determine that in finding petitioner's "composing room" employees to constitute an appropriate unit the Board has abused its discretion and has acted arbitrarily and capriciously.

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Decision of the Second Circuit Court of Appeals.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 344,345—September Term, 1968.
(Argued February 12, 1969 Decided March 19, 1969.)

Docket Nos. 32707, 32855

WHEELER-VAN LABEL COMPANY, Subsidiary of STECHER-TRAUNG-SCHMIDT CORPORATION, *Petitioner*,
against
NATIONAL LABOR RELATIONS BOARD, *Respondent*.

Before: Anderson and Feinberg, *Circuit Judges*, and Mansfield, *District Judges*.*

Petition to set aside and cross petition to enforce bargaining order of the National Labor Relations Board based on findings that Company had violated sections 8(a)(1) and (5) of the National Labor Relations Act by refusing to bargain with Union. Petition to set aside denied; enforcement granted.

A. Terry Van Houten, Rochester, N. Y. (Harris, Beach, Wilcox, Dale and Linowitz, on the brief), for Petitioner.

Herman M. Levy, Attorney, National Labor Relations Board (Arnold Ordman, General Counsel, Dominick L.

* Of the Southern District of New York, sitting by designation.

Manoli, Associate General Counsel, Marcel Mallet-Prevost, Assistant General Counsel, on the brief), for Respondent.

FEINBERG, *Circuit Judge:*

From an order of the National Labor Relations Board, 172 N. L. R. B. No. 186 (1968), finding that Wheeler-Van Label Company, subsidiary of Stecher-Traung-Schmidt Corporation ("the Company"), had refused to bargain with a union representing its composing area employees, both parties seek judicial review.[1] For reasons set forth below, we deny the Company's petition and enforce the Board's order.

The Company is in the commercial printing business in Grand Rapids, Michigan. In March 1967, the Board conducted a representation election, with three unions on the ballot, in two units of the Company's employees. Group (1) was composed of all journeymen pressmen, apprentice pressmen, assistants, and helpers in the pressroom and rotogravure department, but excluded composing area employees. In group (2) were the remaining production and maintenance employees with various exclusions not now relevant. The composing area employees voted in group (2). As a result of the election the Board certified Grand Rapids Printing Pressmen and Assistants' Union, Local No. 13, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, as the bargaining representative of the employees in voting group (1);[2] the Board also certified that no labor organization had been selected as bargaining representative of the employees in voting group (2).

[1] The Company petitioned us to review and set aside the Board's order; the Board, by cross application, seeks enforcement.

[2] The other unions on the ballot were International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, and Local Union No. 216, International Brotherhood of Bookbinders, AFL-CIO.

A few months later, the Company's five composing area employees signed authorization cards designating as their bargaining representative a fourth union, Grand Rapids Typographical Union, Local 39, International Typographical Union, AFL-CIO ("the Union"). Shortly thereafter, four of the composing area employees let it be known to various Company supervisors that they had signed authorization cards. By letter dated August 4, 1967, the Union advised the Company that it represented a majority of composing area employees and requested the Company to bargain with it. In reply, the Company declined to negotiate for the stated reason that:

> The best and most reliable method of knowing how a majority of the men in the Composing Room feel about Union representation is a Board-Conducted secret ballot election.
>
> This group of employees participated in such an election in March of 1967 and it is our understanding that a year from that date should go by before another is scheduled.

The Union renewed its demand for recognition and bargaining and offered to submit authorization cards to an impartial third party acceptable to both. The Company again refused to recognize or bargain with the Union. Early in September 1967, the Union filed an unfair labor practice charge against the Company. While this was pending, and in the same month, four of the five composing area employees tried to arrange a meeting with the Company president. Unsuccessful in this, they met with plant manager Bernard Kochanowski and told him that speaking for themselves and for the absent employee they wanted the Union to represent them; Kochanowski replied that he would inform the "proper authorities."

No meeting between the Company and the Union occurred, and in December 1967 the Regional Director issued a complaint against the Company charging it with having violated sections 8(a)(1) and (5) of the National Labor Relations Act, 29 U. S. C. §§ 158(a)(1), (5). In January 1968, a hearing was held, culminating in a trial examiner's decision in June 1968, adopted by the Board in August, which found that the Company had violated sections 8(a)(1) and (5) and ordered the Company to bargain with the Union. In seeking to set aside the Board's order, the Company argues in this court that the composing area employees did not comprise an appropriate bargaining unit and that the Board's finding of refusal to bargain was improper.

Turning to the unit question first, we are told that composing room work has traditionally consisted of setting of type either by hand or in "hot metal" and assembling the type in forms. However, the Company has virtually eliminated the type-setting phase of the work. Only one of the five employees in question does such work; for the most part, the Company uses pre-set plates obtained from outside sources. Thus, these employees are engaged mainly in assembling the plates onto a form or base for use in the printing operation. According to the hearing testimony: this work requires a distinct skill, which takes from "over a year" to five years to attain; the composing area employees work in a specific location as a separate composing department within the Company structure, are supervised by a separate foreman, and do not transfer to or from other departments;[3] and the Union has approximately 2,000 collective bargaining agreements with other

[3] The testimony was undisputed that no one had transferred out of the composing department since 1947 and that for at least 12 years all new composing area employees had been recruited from outside the Company.

employers, the bulk of which cover solely composing room employees.

In light of these facts, the Company undertakes a sizeable burden in arguing that the unit found was not an appropriate one; there can be no dispute that the Board has considerable leeway in exercising its judgment under section 9(b) of the Act, 29 U. S. C. § 159(b), as to the appropriateness of a given unit. A unit finding by the Board "involves of necessity a large measure of informed discretion," *Packard Motor Car Co. v. NLRB*, 330 U. S. 485, 491 (1947), and, where it is supported by substantial evidence, will not be reversed "in the absence of an 'arbitrary or capricious exercise of administrative discretion,'" *Empire State Sugar Co. v. NLRB*, 401 F. 2d 559, 562 (2d Cir. 1968). The Company argues that the Board's decision was, in fact, arbitrary and capricious, principally because the cases the Board relied on all involved employees who set type or did equivalent work,[4] a function not performed by four of the Company's five composing area employees. The Company claims that by ignoring this factor the Board arbitrarily disregarded the substance of its prior decisions. As further evidence of inconsistency the Company points to the March 1967 election, when the Board placed these five employees in the group (2) voting unit, which included other production and maintenance employees. Finally, the Company argues that its composing area employees should not be separated as a unit from the pressroom employees, with whom they are in close contact and have much in common.

We think that the Board's unit determination must be upheld. Whether these five employees perform all the

[4] The trial examiner cited *Frye & Smith, Ltd.*, 151 N. L. R. B. 49 (1965); *Leslie F. Clarke & Co.*, 147 N. L. R. B. 1240 (1964); *Meredith Publishing Co.*, 140 N. L. R. B. 509 (1963); *Worzella Publishing Co.*, 121 N. L. R. B. 78 (1958).

work traditionally associated with composing rooms is not controlling. The key question is whether the composing area employees have a sufficient community of interest to be an appropriate unit. See *United Aircraft Corp. v. NLRB*, 333 F. 2d 819, 822 (2d Cir. 1964), cert. denied, 380 U. S. 910 (1965). As to that, the evidence supporting the Board's affirmative finding is persuasive, and the cases it relied on do not suggest a contrary view. Indeed, the facts here seem at least as strong as those found sufficient in *Empire State Sugar Co. v. NLRB, supra.* The alleged inconsistency with the Board's determination for the March 1967 election is not imposing. The question before us is not whether the composing area unit is the *only* appropriate unit for these employees. The Board's duty is to choose *an* appropriate unit, and it may select among several appropriate ones. See, e.g., *NLRB v. Western & Southern Life Ins. Co.*, 391 F. 2d 119, 122 (3d Cir. 1968), cert. denied, 37 U. S. L. W. 3209 (U. S. Dec. 9, 1968); *NLRB v. Local 19, Int'l Bhd. of Longshoremen*, 286 F. 2d 661, 664 (7th Cir.), cert. denied, 368 U. S. 820 (1961). On the record before us, the Board's unit determination cannot in any sense accurately be called arbitrary or capricious.

The Company's second point is that the Board was not justified in finding that the Company refused to bargain. Under the present state of the law and on this record, the argument is not persuasive. At no time did the Company express any doubt—much less a good faith one—as to the Union's majority status. Its August 9, 1967 letter stated only its preference for an election and its subsequent letter ignored the Union's suggestion that an impartial third party check the authorization cards. *Cf. Irving Air-Chute Co. v. NLRB*, 350 F. 2d 176, 182 (2d Cir. 1965); *Bryant Chucking Grinder Co. v. NLRB*, 389 F. 2d 565, 568

(2d Cir. 1967), cert. denied, 392 U. S. 908 (1968). In addition, there was abundant evidence that the Company had actual knowledge of the Union's majority status. Before the Union's first written demand for recognition, conversations between four of the five composing area employees and supervisors indicated that status; it was made crystal-clear, after the Union's demand, at the meeting of September 29 with Kochanowski. In support of its "good faith," the Company now appears to contend that it originally regarded the unit sought as inappropriate. The hearing examiner pointed out that the Company never objected to the unit until after the General Counsel served a complaint. We agree that this weakens the Company's claim as to its state of mind four months earlier. In any event, we have held that sincere belief that a claimed unit is inappropriate is not controlling; indeed, we have characterized it as "of no consequence."[5] Finally, the Company did not question the individual validity of the Union's authorization cards; in fact, it does not do so now. Upon the entire record, the General Counsel here more than met his burden of proving the absence of good faith doubt. Compare *NLRB v. Consolidated Rendering Co.*, 386 F. 2d 699, 704 (2d Cir. 1967), with *NLRB v. United Mineral & Chemical Corp.*, 391 F. 2d 829, 837-38 (2d Cir. 1968).

The Company's chief argument on this aspect of the case is that the Board's order placed it "inextricably on the horns of a dilemma." The alleged dilemma arises from section 9(c)(3) of the Act, 29 U. S. C. § 159(c)(3),

[5] *United Aircraft Corp. v. NLRB*, 333 F. 2d 819, 822 (2d Cir. 1964), cert. denied, 380 U. S. 910 (1965); see *NLRB v. Pembeck Oil Corp.*, 404 F. 2d 105, 111 (2d Cir. 1968); *cf. NLRB v. M & M Oldsmobile, Inc.*, 377 F. 2d 712, 716-17 (2d Cir. 1967). But *cf. NLRB v. World Carpets of New York, Inc.*, 403 F. 2d 408, 411 n. 3 (2d Cir. 1968). See also *NLRB v. Bardahl Oil Co.*, 399 F. 2d 365, 368-70 (8th Cir. 1968).

which prohibits more than one representation election in any bargaining unit, or subdivision thereof, in a twelve-month period.[6] Therefore, the Company argues that when it received the Union's written demand in August 1967, the Company could not petition for an election to evidence its good faith doubt because one had been held five months before. While this is so, it is not clear to us what the dilemma was. The Company's preference for an election, it is true, would have been expressed more concretely had it petitioned for one, but its inability to do so did not prevent it from making that preference clear; in fact, it did so in its letters to the Union. Moreover, had there been no prior election, the Company would still have had no absolute right to one in the absence of good faith doubt of the Union's majority status. It may be that this is the dilemma to which the Company points, since it cites *NLRB v. S. S. Logan Packing Co.*, 386 F. 2d 562 (4th Cir. 1967), which held that cards should not be the basis of a bargaining order. However, we are committed to a contrary view. See, *e.g.*, *NLRB v. World Carpets of New York, Inc.*, 403 F. 2d 408, 412 (2d Cir. 1968); *NLRB v. Niskayuna Consumers Cooperative*, 376 F. 2d 260 (2d Cir. 1966).[7] The controlling issue is not whether the Company could have sought an election, but whether it had a

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[6] In pertinent part section 9(c)(3) provides:

> No election shall be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period, a valid election shall have been held.

[7] We are aware that the use of cards to support a duty to bargain will be presented to the Supreme Court in *NLRB v. Gissel Packing Co.*, 398 F. 2d 336 (4th Cir. 1968) (*per curiam*), cert. granted, 37 U. S. L. W. 3219 (U. S. Dec. 16, 1968), and *NLRB v. Sinclair Co.*, 397 F. 2d 157 (1st Cir. 1968), cert. granted, 37 U. S. L. W. 3219 (U. S. Dec. 16, 1968), and that the issue appears to be under reconsideration by the Board itself, as the Company suggests, citing *Wilder Mfg. Co.*, 173 N. L. R. B. No. 30 (1968), and *Grafton Boat Co.*, 173 N. L. R. B. No. 150 (1968). However, the question before us is whether the order of the Board here is enforceable as falling within its discretion on the present state of the law.

good faith doubt of the Union's majority status. That issue—one of fact—has been decided adversely to it by the Board, and that determination is supported by substantial evidence on the record considered as a whole. *Cf. Borden Cabinet Corp. v. NLRB*, 375 F. 2d 891 (7th Cir.), cert. denied, 389 U. S. 841 (1967).

In addition, although neither party has referred to it, we take note of the recent decision of this court in *NLRB v. Pembeck Oil Corp.*, 404 F. 2d 105 (2d Cir. 1968) (2-1), refusing to enforce a bargaining order even though there had been a section 8(a)(5) violation. The majority there distinguished various card-majority decisions where this court has enforced bargaining orders as cases where the employer's conduct "contaminated the results of any future election." 404 F. 2d at 112. This distinction tends to support the argument made by the Company here that a violation of section 8(a)(5) sufficient to sustain a bargaining order in a card-majority case must be accompanied by independent unlawful acts that constitute an effort "to undermine a union's majority status" or otherwise "taint the laboratory conditions in which a Board conducted election could be held." However, we believe that the inappropriateness of the bargaining order in *Pembeck* depended upon the specific facts of that case, particularly the slimness of the union majority and "a considerable doubt as to the employees' continued desire" to be represented by the union. *Id.* at 113. Neither of those factors is present in this case. Indeed, the record here indicates that the employees were both unanimous and steadfast in their desire to be represented by the Union.

Finally, we note here also the opinion of another panel of this court, handed down after this case was argued, in *Schwarzenbach-Huber Co. v. NLRB*, slip op. 1345,

F. 2d ____ (2d Cir. March 5, 1969). Since that case held that the Board incorrectly relied on a number of invalid cards and thus that the union did not represent a majority when it demanded recognition, it is not determinative here, where the Union's majority is clear.

Accordingly, the Company's petition is denied and the Board's cross application for enforcement is granted.

APPENDIX B

Decision of the National Labor Relations Board.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

STECHER-TRAUNG-SCHMITT CORPORATION,
WHEELER-VAN LABEL COMPANY,
ITS SUBSIDIARY,
and
GRAND RAPIDS TYPOGRAPHICAL UNION LOCAL 39, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO.

Case 7-CA-6248.

DECISION AND ORDER

On June 5, 1968, Trial Examiner Eugene E. Dixon issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in

certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, Stecher-Traung-Schmitt Corporation, Wheeler-Van Label Company, Its Subsidiary, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C., Aug. 21, 1968.

FRANK W. McCULLOCH, *Chairman,*
JOHN H. FANNING, *Member,*
HOWARD JENKINS, JR., *Member,*

(SEAL) NATIONAL LABOR RELATIONS BOARD.

APPENDIX C

Decision of the Trial Examiner.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

DIVISION OF TRIAL EXAMINERS

Washington, D. C.

STECHER-TRAUNG-SCHMITT CORPORATION,
WHEELER-VAN LABEL COMPANY,
ITS SUBSIDIARY,
GRAND RAPIDS TYPOGRAPHICAL UNION LOCAL 39, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO.

Case No. 7-CA-6248.

Irene Piccone, Esq., Detroit, Mich., for the General Counsel.

Harris, Beach, Wilcox, Dale & Linowitz by A. Terry Van Houten, Esq., Rochester, N. Y., for the Respondent.

Thomas L. McCarthy, President, Grand Rapids Typographical Union Local 39, Grand Rapids, Mich., for the Charging Party.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

EUGENE E. DIXON, Trial Examiner: This proceeding, brought under Section 10(b) of the National Labor Rela-

tions Act, as amended (61 Stat. 136), herein called the Act, was heard at Grand Rapids, Michigan, on January 17, 1968, pursuant to due notice. A complaint, issued by the Regional Director of the 7th Region (Detroit, Michigan) as the representative of the General Counsel for the National Labor Relations Board (herein called the General Counsel and the Board) on December 8, 1967, and based on charges filed by Grand Rapids Typographical Union Local 39, International Typographical Union, AFL-CIO (herein called the Union or the Charging Party), on September 6, 1967, alleged that Stecher-Traung-Schmitt Corporation, Wheeler-Van Label Company, its Subsidiary, the Respondent herein, had engaged in and was engaging in unfair labor practices in violation of Section 8(a)(1) and (5) of the Act by refusing to bargain collectively with the Union as the exclusive bargaining representative of the employees in an appropriate unit.

In its duly filed answer, Respondent denied the commission of any unfair labor practices.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. Respondent's Business

At all times material herein Respondent has been a corporation duly organized under and existing by virtue of the laws of the State of Michigan maintaining an office and place of business in the City of Grand Rapids, Michigan,[1] where it has been at all times material engaged in the commercial printing business. During the calendar

[1] Herein called the Grand Rapids Installation and the only one involved in this proceeding.

year 1966 which is a representative period, Respondent in the course and conduct of its business operations, manufactured, sold, and distributed at its Grand Rapids, Michigan, installation products valued in excess of $100,000 of which products valued in excess of $50,000 were shipped from the said installation directly to points located outside the State of Michigan. During the same period of time it purchased and caused to be transported and delivered at its Grand Rapids, Michigan, installation, paper and other goods and materials valued in excess of $100,000 of which $50,000 worth were transported and delivered to its installation in Grand Rapids, Michigan, directly from points located outside the State of Michigan. At all times material Respondent has been engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization

Grand Rapids Typographical Union Local 39, International Typographical Union, AFL-CIO, at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

The complaint alleges and the answer admits that:

> . . . Pursuant to a Decision and Direction of Election issued January 27, 1967, by the Regional Director of the Seventh Region of the Board in Cases Nos. 7-RC-7785 and 7-RC-7787, an election by secret ballot was conducted on March 1, 1967, among the following two voting groups of Respondent's employees at Respondent's Grand Rapids, Michigan, installation:
>
> Voting Group (1): All journeymen pressmen, apprentice pressmen, assistants, and helpers employed

in the Employer's pressroom and rotogravure department employees, production scheduling employees, guards and supervisors as defined in the Act, and all other employees.

Voting Group (2): All production and maintenance employees, including quality control employees, and the shipping employees, but excluding office clerical employees, production control employees, art department employees, guards, and supervisors as defined in the Act, and employees in Group 1 above.

. . . The labor organizations involved in the aforesaid election were: Grand Rapids Printing Pressmen and Assistants' Union, Local No. 13, International Printing Pressmen and Assistants' Union of North America, AFL-CIO; International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO; Local Union No. 216, International Brotherhood of Bookbinders, AFL-CIO.

. . . Subsequent to the election referred to in paragraph 8 above, on March 13, 1967, the Regional Director of the Seventh Region of the Board issued a "Supplemental Decision on Objections and Certification of Representative and Certification of Results of Election," wherein the Employer's (Respondent herein) Objections to the election were overruled; the Grand Rapids Printing Pressmen and Assistants' Union, Local No. 13, International Printing Pressmen and Assistants' Union of North America, AFL-CIO, was certified as exclusive representative of the employees in Voting Group (1), and it was certified that no labor organization was selected as bargaining representative of employees in Voting Group (2).

> . . . The composition (or composing area) employees employed by the Respondent at its Grand Rapids, Michigan, installation, were included among the employees in the larger production and maintenance unit described as Voting Group (2) in subparagraph 8(a) above.

The complaint also alleges that:

> . . . All composition employees employed by the Respondent at its Grand Rapids, Michigan, installation, excluding office clerical employees, guards, and supervisors as defined in the Act, and all other employees, is a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

This allegation is denied by Respondent and constitutes a key issue in the case.

There are five composition or composing area employees which make up the total complement of the disputed unit. By June 8, 1967, all five had signed cards authorizing the Union to represent them as their collective-bargaining agent. On August 4, the Union by letter notified the Company that it represented the majority of its composing room employees and requested recognition. On August 9, the Company replied by letter declining to recognize the Union and stating that

> The best and most reliable method of knowing how a majority of the men in the Composing Room feel about union representation is a Board-Conducted secret ballot election.
>
> This group of employees participated in such an election in March 1967 and it is our understanding that a year from that date should go by before another is scheduled.

The Union answered this with another letter dated August 17, repeating its request for recognition and offering to prove its representative status by an impartial card check. The Company rejected this request by letter dated August 29 as follows:

> You will recall that in my letter of August 9th to Mr. Gutowski I explained the Company's position on the matter of recognition and negotiation of a contract. It is our wish to comply with the requirements of the National Labor Relation's (*sic*) Act and accordingly we must decline the suggestions set forth in your letter of August 17th.

On September 6, the Union filed refusal to bargain charges against the Company.

Shortly after the cards had been signed and prior to any of the foregoing correspondence, Respondent's foreman Valentine was informed by one of the employees, Paul Cobb, that all five of the composing room employees had signed authorization cards. Another of the compositors, Richard Van Ess, also told Valentine a couple of weeks after they had signed the authorization cards that "all the boys joined the union on the cards." Similarly, compositor Leonard Sweeris not only told Valentine that he had signed a card but also told two other supervisors and indicated to at least one of them (Walter Pedley, foreman of the cutting department), that others had also signed.

After the above correspondence exchange, in order to make sure that the Company knew that the employees wanted the Union to represent them they sought a meeting with Respondent's then president Joe Martin but settled for a meeting on September 29, with Plant Superin-

tendent Bernard Kochanowski. Four of the five employees attended this meeting where they informed Kochanowski that, speaking for themselves and their absent colleague, they wanted the Company to know that it was their desire to have the Union represent them as their collective-bargaining agent. Kochanowski said, "Okay. Fine. I'll let it be known to the proper authorities."

On the basis of the foregoing evidence (plus testimony as to the duties of the composing room employees in the instant hearing and the transcript taken at the hearing in Cases 7-RC-7785 and 7-RC-7787) the General Counsel contends that Respondent lacked the good-faith doubt about the Union's representative status necessary to excuse its failure to bargain with the Union and thus has violated Section 8(a)(1) and (5) of the Act.

Respondent's defenses are that (a) the unit is not an appropriate unit and (b) even if it were to be so considered, absent an affirmative showing by the General Counsel of bad faith on the part of Respondent in insisting on an election, Respondent cannot be said to have violated the Act.

The Unit

The composing department (or plate department as it also has been referred to) comprises about 500 or 600 square feet on the second floor of one of the two buildings at Respondent's Grand Rapids installation. The press department is also located on the same floor and practicably surrounds the composing department with no walls or partitions separating the two departments. The bulk of the work in the department (performed by a classification known as compositor stoneman) consists of making up forms for the presses by assembling printing plates[2] on a

[2] These plates are not made by Respondent but are obtained from outside sources in accordance with Respondent's or its customers' specifications.

patent base "which is locked up with the patent base hooks" by key. In the course of this work the compositors use a variety of tools and equipment used by no other department in the plant.[3] The only department that the composing department has any close contact with is the press department. This contact for the most part involves lining up a printed sample impression taken by the pressmen before the job is run to see that everything is in order and pointing out to the pressmen specific things to watch for in running any given job.

The work of the department is supervised by a separate foreman. Skills adequate for performance in the bindery, coating and press departments are not adequate for performance of the work in the composing department. Thus, although there is a job bidding procedure in effect in the plant, no one from other departments ever works as a compositor-stoneman on a temporary basis and no one ever transfers from other departments to the composing department in that classification on a full-time basis—all such accretions to that department during the last several years having been acquired from the outside.[4] All of the compositor stonemen incumbents had experience in composition work prior to working for Respondent and by their estimates it would take anywhere from "over a year" to 5 years for any of the other employees to acquire the skills necessary to satisfactorily perform the work in the composing department.

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[3] So used are (1) cylinder routers for routing curved plates; (2) hand routers used for flat plates; (3) hand shoots for shooting (*i.e.* planing plates down); (4) large saw for cutting plates; (5) line gauges for measurements; (6) tooth press; (7) a large and small stone for makeup work, and (8) a line-up table for lining up all sheets. This table can actually be called a machine with vertical and horizontal sliding bars and ink roller for marking purposes with lights underneath that illuminate the work through the table's translucent top.

[4] In the 12 years of incumbent Thomas J. Impens' tenure with Respondent four compositor stonemen were hired—all from the outside.

From the undenied and credited testimony of Frank Cremonesi, administrator of the Charging Union's International Training Center in Colorado Springs[5] who has had experience in this field for over 30 years, the work performed by Respondent's composing department involves "typical composing room skills" employed in the printing of newspapers; "* * * basically, the skills are the same. The practices may be different but the basic skills, the basic operations are the same."

It also appears from Cremonesi's testimony that the Union has approximately 2,000 collective-bargaining contracts with printing establishments throughout the United States and Canada and that the bulk of them pertain solely to composing room employees. The Union, it appears, also accepts into membership people who have not gone through formal apprenticeship training as such upon demonstration that they have had experience equivalent to the Union's apprenticeship requirements and can pass a union examination showing that they have acquired skills necessary for a journeyman's standing.

The General Counsel cites several cases to show that units composed solely of composing room employees are proper[6] and maintains that such is the situation here. Respondent contends that neither on a departmental approach nor a craft approach can it be said that the composing department constitutes an appropriate unit.

As for the departmental approach, Respondent cites the fact that all the employees in both the composing depart-

[5] ". . . the training center has been set up by the International Typographical Union to teach new methods that are coming into the printing industry, to teach the operation of the machines and new techniques, and preparation of type for printing."

[6] *Worzella Publishing Company*, 121 NLRB 78; *The Meredith Publishing Company*, 140 NLRB 509; *Leslie F. Clarke & Co., Inc.*, 147 NLRB 1240; *Frye & Smith, Ltd.*, 151 NLRB 49.

ment and other departments are hourly paid, report for work and leave at the same time, and have a common lunch period and that all of the department supervisors report to the plant superintendent "through who (*sic*) coordination is achieved" as reflecting the "highly interdependent functioning among the departments" and maintains that "violence would be done to this productive integrity if any unit other than a plant-wide production and maintenance unit were found appropriate."

I see nothing in this record that would establish such "highly interdependent functioning among the departments" that would preclude the finding of a separate appropriate unit for the composing department. About all that can be said in this respect is that, as observed by the General Counsel, the composing room employees "are about as isolated from the other employees as could be expected in any plant. They do their work in their own area, and have very minor * * * contact with other employees. They have their own training and skills * * *."

As for the craft approach, Respondent maintains that because there is only a minor amount of typesetting done in the department (and this by only one of the compositors) "the very essence of a traditional composing room is absence." While it may be true that the composing skills here are not identical to the skills originally forming the basis for composing room units, I believe that the facts here are such as to support the conclusion that a separate unit for the composing department constitutes an appropriate unit. As stated by the Board in *Fry & Smith, Ltd.*, which also involved methods different from traditional composing room methods,

> * * * the employees involved herein are a distinctive group of employees with a sufficient community of in-

> terests and skills to constitute an appropriate unit. We are mindful of the fact that technical changes in composition methods have to some extent modified the skills required of composition employees, but we are satisfied that these employees exercise sufficient skills in common with those employed in traditional 'hot metal' composing rooms to be entitled, like the latter, to separate representation.[7]

Accordingly, I find that the bargaining unit as alleged in the complaint constitutes an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Respondent's motive

As indicated, Respondent's alternative defense is that even if it be determined that the unit is appropriate, its failure to recognize the Union and its insistence upon an election does not amount to a violation of the Act. In oral argument at the hearing the General Counsel relied largely on *Snow & Sons*, 134 NLRB 709. In its brief, Respondent relies chiefly on *Aaron Brothers Company of California*, 158 NLRB 1077. Both cases involve a refusal to recognize a union's demand for recognition on the basis of a card majority and the insistence on an election for the purpose of determining the employees' desires in a context free of any independent violations of the Act. In *Snow*, when the Union's demand for recognition was made the Company refused to recognize on the grounds that it doubted the Union's majority. Later the same day, the Company agreed to a card check which established the majority status of the Union. Although not questioning the accuracy

[7] One of the factors that the Board gave weight to in reaching the above result was the fact that the Company, as here, had to recruit its composing room employees from experienced people outside of its own organization.

or propriety of the card check the Company nevertheless still refused to recognize the Union maintaining that it did not consider the card check binding on it. On essentially those facts the Board held that the Company had violated Section 8(a)(5) of the Act stating:

> The Board has held that the right of an employer to insist upon a Board-directed election is not absolute. Where, as here, the Employer entertains no reasonable doubt either with respect to the appropriateness of the proposed unit or the Union's representative status, and seeks a Board-directed election without a valid ground therefor, he has failed to fulfill the bargaining requirements under the Act. (Footnotes deleted.)

In *Aaron Brothers* the Union, with a card majority, demanded recognition by letter and filed an RC petition at about the same time. Receiving no reply to its demand it then filed refusal-to-bargain charges and withdrew the RC petition. Thereafter it orally sought recognition as majority representative of the employees. The Company, denying that the Union represented a majority, urged the Union to reinstate the RC petition and have the majority status determined by a secret ballot. The Trial Examiner found "good faith" on the part of the Company missing here because it offered no evidence "warranting a conclusion that the Union's claim (of majority) was inaccurate or unsupportable." The Board reversed the Trial Examiner stating:

> While an employer's right to a Board election is not absolute, it has long been established Board policy that an employer may refuse to bargain and insist upon such an election as proof of a union's majority unless its refusal and insistence were not made with a good-faith doubt of the union's majority. An election by

> secret ballot is normally a more satisfactory means of determining employees' wishes, although authorization cards signed by a majority may also evidence their desires. Absent an affirmative showing of bad faith, an employer, presented with a majority card showing and a bargaining request, will not be held to have violated his bargaining obligation under the law simply because he refuses to rely upon cards, rather than an election, as the method for determining the union's majority. (Footnotes deleted.)

The Board further stated that bad faith can be inferred from conduct which does not constitute an unfair labor practice but which nevertheless shows a "rejection of the collective bargaining concept" and cited the employer's repudiation of the card check in *Snow* as such an example. In a separate concurring opinion, Board Member Jenkins observed that bad faith on the part of an employer in this connection can be established by, *inter alia*, the "independent knowledge of the employer that the Union has a majority."

Respondent contends that the General Counsel's reliance on *Snow* is misplaced because there the employer "admitted the appropriateness of the unit and having verified the authorization cards, could not be heard to claim a good faith doubt" while here "the employer strongly contests the appropriateness of the unit and further neither inspected the authorization cards nor agreed to so inspect." The flaw in Respondent's position *vis-a-vis* its good faith is that now here in the record is there any question raised about the appropriateness of the unit until the filing of its answer to the complaint on December 20, 1967. In any event it is well settled that refusal to recognize a union on the basis of a good faith but erroneous belief about the

appropriateness of the unit is no defense to a refusal to bargain charge. *The Daily Advertiser*, 156 NLRB No. 53; *The Sinclair Company*, 163 NLRB No. 49. Moreover, that Respondent did not participate in a card check here avails it nothing in view of the fact that Respondent was put on notice by the employees themselves on at least two occasions (once shortly after they signed the authorization cards and again on September 29) that they all had selected and desired the Union to represent them as their collective bargaining agent. Clearly, this evidence shows the "independent knowledge of the employer" that the Union had a majority and amounts to the "affirmative showing of bad faith" on the part of the Respondent that the *Aaron Brothers* case requires the General Counsel to establish an order to prove his allegation of refusal to bargain. In this connection, there is no question (as shown by the filing of the changes) that the Union's request for recognition was a continuing one.

One other aspect of Respondent's position remains to be disposed of. That has to do with the effect, if any, of the Board election here within 12 months of the Union's demand for recognition. It is now well established that Section 9(c)(3) of the Act[8] does not "provide a 1-year period of repose from the bargaining demand of unions." *Rocky Mountain Phosphates, Inc.*, 138 NLRB 292; *Concrete, Inc., d/b/a Great Scot Super Market*, 156 NLRB 592, enf., 368 F. 2d 173 (C. A. 7); and *General Tire and Rubber Company, d/b/a Astoria General Tire Co.*, 170 NLRB No. 78. Any thought that Respondent might have had that it was not obligated to recognize the Union because of the prior election is no defense here either. See *General Tire and Rubber Company, etc., supra.*

[8] Section 9(c)(3) in pertinent part provides: "No election shall be directed in any bargaining unit or subdivision within which, in the preceding 12-month period a valid election shall have been held . . ."

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent as set forth in section I, above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in unfair labor practices prohibited by Section 8(a)(1) and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and take the usual affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record herein, I make the following:

CONCLUSIONS OF LAW

1. Stecher-Traung-Schmitt Corporation, Wheeler-Van Label Company, its Subsidiary, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Grand Rapids Typographical Union Local 39, International Typographical Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All composition employees employed by the Respondent at its Grand Rapids, Michigan, installation, excluding office clerical employees, guards, and supervisors as defined in the Act, and all other employees, is a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. By refusing to bargain in good faith with the above Union as the representatives of the employees in the above bargaining unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this proceeding, I recommend that Stecher-Traung-Schmitt Corporation, Wheeler-Van Label Company, its Subsidiary, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively in good faith with the Charging Party as to wages, hours and other terms and conditions of employment covering employees in the unit herein found to be appropriate.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights under Section 7 of the Act.

2. Take the following affirmative action which appears necessary and appropriate to effectuate the policies of the Act:

(a) Upon request bargain collectively with the Charging Party as the representative of its employees in the appropriate unit in good faith and in sincere effort to reach agreement and embody in a written and signed memorandum any understanding reached.

(b) Post at its Grand Rapids, Michigan, installation, copies of the notice attached hereto and marked "Ap-

pendix.'"[9] Copies of said notice, on forms provided by the Regional Director for Region 17, shall after being duly signed by a representative of the Respondent, be posted by it immediately upon receipt and maintained by it for a period of 60 consecutive days thereafter in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.

(c) Notify the Regional Director for the Seventh Region, in writing, within 20 days from the date of receipt of this Decision, what steps the Respondent has taken to comply herewith."[10]

It is further recommended that unless, within the aforesaid 20-day period that Respondent notify the Regional Director in writing that it will comply with the Order recommended herein, the National Labor Relations Board issue an Order requiring Respondent to take the action recommended.

Dated at Washington, D. C.

EUGENE E. DIXON,
Trial Examiner.

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[9] If these Recommendations are adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the notice. If the Board's Order is enforced by a decree of the United States Court of Appeals, the notice will be further amended by the substitution of the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" for the words "A DECISION AND ORDER."

[10] If these Recommendations are adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for the Seventh Region, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively with GRAND RAPIDS TYPOGRAPHICAL UNION LOCAL 39, INTERNATIONAL TYPOGRAPHICAL UNION, AFL-CIO, in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL upon request, bargain with the above-named Union, as the exclusive bargaining representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such an understanding in a signed agreement.

The bargaining unit is all of our composition employees employed in our Grand Rapids, Michigan, installation, excluding office clerical employees, guards, and supervisors as defined in the Act, and all other employees.

STECHER-TRAUNG-SCHMITT CORPORATION, WHEELER-VAN LABEL COMPANY, Its Subsidiary.

Employer

Dated ..... By .....

(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 610 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106 (Tel. No. 374-5181).